

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CLAUDE E. BENNETT
Claimant

VS.

K-MART CORPORATION
Respondent

AND

**KANSAS WORKERS COMPENSATION
FUND**
Insurance Carrier

Docket Nos. 187,608 &
187,609

ORDER

Claimant requested review of the September 26, 2006, Post-Award Decision entered by Administrative Law Judge Robert H. Foerschler. This matter was placed on the Board's summary docket for determination without oral argument.

ISSUES

The Administrative Law Judge (ALJ) ordered that claimant be reimbursed by respondent for the cost of the repair of shoes and the cost of support hose. The ALJ also ordered respondent to reimburse claimant for medical mileage. The ALJ left open the question of attorney fees.

Claimant states that in his Application for Post-Award Medical, he requested two pair of shoes as per the ALJ's order of October 5, 2005; reimbursement of medical expenses in the amount of \$648; medical mileage reimbursement in the amount of \$1,805.44, 12 pair of Jobst support hose; aqua therapy as ordered by the authorized treating physician, and attorney fees to be determined at a later time. Claimant agrees with the ALJ's order requiring that he be reimbursed for the cost of repairing his shoes and for his medical mileage. Claimant notes that the ALJ's Post-Award Decision ordered that he be reimbursed for the cost of 12 pair of Jobst support stockings. Claimant, however, had not purchased the stockings because the cost of the stockings was prohibitive and requests that the stockings be provided by respondent. The ALJ also did not rule on the

claimant's request for water therapy and for two pair of shoes as prescribed by the authorized treating physician. Claimant requests the Board enter a decision on the issues presented to the ALJ but for which no ruling was made.

Neither the respondent nor the Workers Compensation Fund have filed a brief in this appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In May 1993, claimant fell while working for respondent, injuring his right ankle and leg. The claim was settled on September 18, 1995, leaving open future medical benefits upon proper application to the director. Dr. Susan Bonar, claimant's authorized treating physician, prescribed orthotic shoes and inserts for claimant. When claimant tried to obtain the shoes, however, respondent failed to authorize payment for the same. Claimant then purchased one pair on his own. In June 2005, Dr. Bonar wrote a prescription indicating that claimant should be provided with two pair of shoes every year, one pair of tennis shoes and one pair of dress shoes. She also ordered that inserts be replaced every six months as needed. A hearing was held in August 2005. On October 5, 2005, the ALJ ordered respondent to provide claimant with the two pair of orthotic shoes. Respondent appealed this order to the Board, and the Board affirmed the ALJ's decision.¹

Claimant again saw Dr. Bonar on June 21, 2006. At that time, she prescribed 12 pair of Jobst support hose and water therapy. On August 7, 2006, claimant filed an Application for Post-Award Medical requesting additional medical treatment to the right lower extremity.

At the hearing held on September 21, 2006, claimant testified that although he had requested the two pair of shoes as previously ordered by the ALJ and affirmed by the Board, respondent had still failed to authorize payment of the same. Claimant, therefore, had his pair of old shoes reconstructed. The ALJ ordered that claimant be reimbursed for the cost of reconstructing his old pair of shoes. He is, however, still requesting the two pair of shoes previously prescribed.

Also at the hearing, claimant entered into evidence the prescriptions for the water therapy and the support hose. The ALJ appears to have included the cost of the support hose in his order reimbursing claimant for out of pocket medical expenses, although there was no testimony that claimant had purchased these support hose himself. The Post-Award Decision did not mention claimant's request for authorization of the water therapy prescribed by Dr. Bonar.

¹ *Bennett v. K-Mart Corporation*, No. 187,608 & 187,609, 2006 WL 328194 (Kan. WCAB Jan. 25, 2006).

Dr. Bonar is the authorized treating physician. Accordingly, any and all medical treatment, including medicines, medical supplies and apparatus, ordered or prescribed by Dr. Bonar is likewise authorized.² And because Dr. Bonar is authorized, should respondent or the Fund dispute the medical necessity or reasonableness of Dr. Bonar's treatment, or question whether a prescribed item constitutes medical treatment, respondent or the Fund may challenge same by requesting a hearing before the ALJ. Absent such a challenge, Dr. Bonar's treatment and referrals constitute authorized medical treatment, and respondent and the Fund are responsible for the payment of same.

The ALJ's Post-Award Decision orders respondent and the Fund to reimburse claimant for all requested medical mileage expenses, the cost of repairing his shoes, and the costs of obtaining support hose. Neither respondent nor the Fund have presented any argument, defense or objection to the Board to the ALJ's order. Accordingly, those orders are affirmed. Respondent and the Fund have likewise presented no argument, defense or objection to the Board regarding claimant's requests on appeal for respondent and the Fund to arrange for the two new pair of shoes previously ordered, without claimant having to incur the expense for same in advance and then seek reimbursement from respondent and the Fund, likewise for the 12 pair of Jobst stockings, and likewise for the aqua therapy, all as recommended by Dr. Bonar. A review of the hearing transcript shows no explanation for why these have not been provided and paid for by the respondent and Fund. Neither does the record reveal any argument or legal defense for the respondent and Fund's failure to provide and pay for these items and treatment. Accordingly, claimant's requests are approved and ordered paid.

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Decision of Administrative Law Judge Robert H. Foerschler dated September 26, 2006, is affirmed in part and modified to also order respondent and the Kansas Workers Compensation Fund to provide claimant with two pair of orthotic shoes, 12 pair of Jobst support hose, and aqua therapy, each as prescribed by the authorized treating physician and subject to the medical fee schedule.

IT IS SO ORDERED.

² See K.S.A. 44-501(a) and K.S.A. 44-510h(a).

Dated this _____ day of December, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
John R. Emerson, Attorney for Self-Insured Respondent
M. Bradley Watson, Attorney for the Fund
Robert H. Foerschler, Administrative Law Judge